

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3811 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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B L PATHAK

Versus

STATE OF GUJARAT

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Appearance:

MR MANOJ N POPAT for Petitioner

MR HL JANI for Respondent No. 1, 2

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 21/03/97

ORAL JUDGEMENT

1. Heard the learned counsel for the parties. The petitioner, a Police Inspector of the Police Department of the Government of Gujarat, filed this Special Civil Application and prayer has been made for direction to the respondents to put his name in the select list of 1973 for promotion to the post of Police Inspector, and further direction to promote him when his juniors were promoted with all the consequential benefits which follow

therefrom.

2. This Special Civil Application has been filed by the petitioner before this Court on 2nd August, 1983. The promotions of the junior persons were made in the year 1973. So the petitioner has been superseded in the year 1973, but he filed this Special Civil Application claiming the deemed date of promotion after ten years. The petitioner has not made any grievance against his supersession which has taken place in the year 1973. Nothing has been produced on the record by the petitioner to show that at any point of time after his supersession, he has made any representation. From the record of this Special Civil Application, it comes out that the petitioner was given promotion with effect from 3rd October, 1979, but the date on which his promotion has been given has not been mentioned by the petitioner nor the order of promotion has been produced, but from the document annexure 'A' to the petition, his representation dated 24th January, 1980, it is clear that this promotion was given prior to 24th January, 1980. This is the first time after his promotion, the petitioner made a claim for giving him the deemed promotion from 1973, however, that claim was not accepted fully, but from annexure 'B' it comes out that he has been given the promotion from 11-1-1978. No explanation forthcoming from the petitioner why he has not made any representation against his alleged supersession. This conduct of the petitioner disentitle him from getting any relief from this Court. He acquiesced in the matter of his supersession and now after 10 years he is estopped from challenging the same. In the State of Gujarat, it seems to be the modus-operandi of the employees of the Police Department not making any complaint against their supersession till they pocketed their promotion and thereafter they raise their claim for deemed promotion. Apart from this on merits also, the petitioner has no case.

3. The case of the petitioner for inclusion of his name in the select list was considered by the Selection Board in March, 1973, but the Selection Board did not found him fit for promotion and his name was not included in the select list. Similarly, in September, 1974, August, 1976 and December, 1977 the petitioner's name was considered for inclusion in the select list for promotion to the post of Police Inspector, but on all these occasions, the petitioner was not found fit for promotion, and therefore, his name was not included in the select list.

4. What the counsel for the petitioner contended

that there was no adversity in the service record of the petitioner, he should have been given the promotion as the criteria for promotion is seniority-cum-merit. However, the counsel for the petitioned has failed to produce any record after 1950 to show that the criteria for promotion on the post of Police Inspector was seniority-cum-merit at the relevant time. However, the petitioner has only a right of consideration for promotion and that right has not been denied. After reconsideration of the case of the petitioner, his name was included in the select list of December, 1977 and he was given the promotion from 11-1-1978, the day on which Shri S.P. Pandya was given promotion.

5. In the result, this writ petition fails and the same is dismissed. Rule discharged. No order as to costs.

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